

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FILED

SEP 27 2019

Clerk, U.S. District Court
Texas Eastern

CITY OF CANTON, TEXAS,

§

Plaintiff,

§

VS.

§

NO. 6:19-CV-365-JDK

§

NEW BEGINNINGS FELLOWSHIP

§

CHURCH OF HOUSTON, TEXAS and

§

BARNEY JOE DONALSON, JR,

§

Individually and d/b/a as

§

COVENANT COMMUNITY OF NEW

§

BEGINNINGS FELLOWSHIP/

§

CANTON,

§

Defendants.

§

**DEFENDANT DONALSON'S EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES JOE DONALSON, Defendant, and, files this his
Emergency Motion For A Temporary Restraining Order and/or Preliminary
Injunction. In support, Donalson will show the Court as follows:

I. SUMMARY OF RELIEF SOUGHT IN THIS MOTION

1. The city of Canton ordered Oncor to disconnect electric service at a

church building, and has issued an order condemning the property. Today, the city attorney advised the undersigned that the condemnation order extends not only to the building, but also to parking lot, roads, and other empty lots that are part of property owned by the church. The city attorney states that church members are prohibited from being anywhere on their property. Hence, the city has denied permits for a yard sale – an event to raise money for extensions to the building's fire sprinkler system -- scheduled to take place on Saturday (9/28/2019), and New Beginnings can no longer hold the weekly church services that are currently being held outdoors. New Beginnings seeks an order that the city restore electricity to its property, and that religious services and other church activities be allowed to continue.

II. BACKGROUND

2. This case involves a Houston church that in 2017 purchased a 110-bed nursing home in Canton, Texas, to use as an emergency shelter for refugees of Hurricane Harvey, and then to later establish a permanent facility offering a worship sanctuary, housing and other services (clothing distribution, job search classes, counseling, substance abuse treatment, etc) to needy individuals. Unknown to the church at the time of purchase, the City of

Canton and private developers were proposing a new road behind the church's property for a high end residential development. Although the church has signed over an easement to allow a proposed road and utilities to pass through their property, they have repeatedly refused to sell their property to private developers. Because area residents do not want the facility in their neighborhood and developers covet the church property, they have applied enormous pressure on city officials to do everything possible to demolish the facility.

3. Here, the facts show that even before the church bought the property, in a *recorded conversation* the town's "Boss Hogg" warned the utilities in the building would be red tagged if the church attempted to do anything the city didn't like. See <https://youtu.be/TQNMWCaQZhs> The facts also show that after purchase, the city of Canton contracted a private electrician – one who was first terminated, then allowed to resign by the City of Mineola for soliciting bribes – to inspect the facility. Although the building had electric service for over 45 years, the electrician red tagged it as "unsafe" because "it wasn't wired correctly when built." On the basis of this patently false "unsafe" determination, Canton had Oncor disconnect electrical service to the building while church members and volunteers were inside cleaning,

leaving them in darkness. Subsequently, the same inspector tore up a permit application for service to a temporary pole, declaring that the church was not getting power to the building under any circumstances.

4. The facts show that Canton has systematically engaged in a pattern of conduct designed to block two previous owners and now New Beginnings Church from repairing and renovating the facility. They have either denied or ignored over a dozen permit applications. They have been openly hostile, declaring that “You are not going to open a shelter in our city.” Under the guise of an administrative search warrant, issued on the basis of a probable cause affidavit alleging facts that their affiant later admitted were untrue, city officials broke into the church building. On one occasion, Canton City Manager Lonnie Cluck was streamed live on Youtube declaring “we are not granting any permits for that property under any circumstances.” See <https://youtu.be/vSyI3UJ5ouY>

III. Legal Issues

5. Of utmost importance here are the implications of the free exercise clause of the federal constitution. **U.S. Constit., Amendment I.** Every action

taken here, and every action sought to be blocked by Canton, involves the exercise of religious worship. Congress has passed the *Religious Land Use and Institutionalized Persons Act*, and the State of Texas has passed the *Religious Freedom and Restoration Act* to provide a remedy in situations like what is present here. Canton's turning off electricity and prohibiting outdoor religious worship services are not the least restrictive means of furthering a compelling governmental interest. Here, in an effort to make it cost prohibitive for New Beginning's to use their church building, Canton has refused to make any accommodations at all, instead insisting on strict compliance with all current building codes. The globalist code adopted by Canton attempts to override the Texas Constitution prohibitions against retroactive laws affecting vested property rights, and fails to "grandfather" existing buildings based on compliance with codes in effect when constructed. In an effort to keep the church from opening, city officials have denied all permits, and have demanded that before church members can do anything with their building they must pay hundreds of thousands of dollars for new city water lines, a fire sprinkler system, architect blueprints, engineering and environmental studies, etc. Canton is now aggrieved that church members, in defiance of the city's wishes, are holding church services outdoors, and have been cleaning,

painting, and replacing flooring with a declared intent to use their property for religious purposes. To try to stop the church, the conducted a sham “condemnation hearing” and are now trying to prevent any and all use of the property until they can get an order to demolish it.

IV. ARGUMENT

6. The undersigned asks the Court to take into consideration that he is the operational director of a nonprofit religious organization totally funded by donations from generous persons wanting to help others in need. This organization receives no government funding. The cost of fees and legal representation in this and another federal case has already exceeded \$10,000, forcing diversion of funds that should have gone towards the operations of facilities in Houston. This Canton issue, along with Tropical Storm Imelda flooding of one of facilities, has placed us in dire financial straits. We may soon have to close one of our Houston facilities due to an inability to pay for repairs and outstanding utility bills.

7. The undersigned also asks this Court to take into consideration that

we are very much aware of the safety issues in our building; that is *why* we are currently conducting religious services outside the building. Over the past year, our members and volunteers have been actively working to make repairs and improvements as funding allows. Canton, however, is overreacting. Many of its allegations concerning safety are “pretextual” (they want the building gone so developers can build a new subdivision) and/or *simply untrue*. Canton argues in its pleadings that current safety issues exist due to asbestos in the building. In reality, the building was remodeled in 1991 under the supervision of HBJ Architects of Dallas, at which time asbestos containing materials (floor and ceiling tiles) were removed and replaced. In 2017, testing revealed only trace amounts of asbestos in glue residue underneath the floor tiles installed in 1991. Here, New Beginnings is not doing any major construction or structural modifications. Other than vague allegations of “possible asbestos,” Canton has not presented any evidence proving that asbestos remained in the building after the 1991 remodel, or that the activities of New Beginnings volunteers (cleaning mildew, painting, patching holes, exchanging old light fixtures to energy efficient LED bulbs, replacing broken ceiling tiles, and laying down new carpet tiles) presents a safety hazard to occupants of the building. Also, Canton alleges there is mold in the building that poses safety concerns. Mold

is a living organism that was put on this planet by our Creator. It is found everywhere. Canton's spurious claim that there is dangerous mold in New Beginning's property, without more, cannot support relief depriving church members use of their property. Canton has not conducted any testing, nor presented any lab reports proving that spots of discoloration on walls are in fact mold, what type of mold it is, and/or whether it is of a type that poses safety concerns. Canton also has submitted photographs showing the use of extension cords to obtain electricity from solar panels and generators, and showing portable propane heaters used to warm the interior of the building last winter. While these photos are the "fruit" of an illegal search warrant, and as such are inadmissible, they are also not an accurate depiction of current conditions. The Declaration of Joe Donalson on file in this case has pictorial exhibits proving that: (1) bleach and other cleaning materials have been used to clean and remove discolored spots on walls and ceilings; (2) the temporary extension cords have been removed; and (3) there are no longer any propane heaters in the building. Further, as demonstrated in two recent videos streamed live from a cell phone into a Youtube server, the building currently has a working smoke detection and fire alarm system, along with a fire sprinkler system that fully complied with all codes applicable to the building at

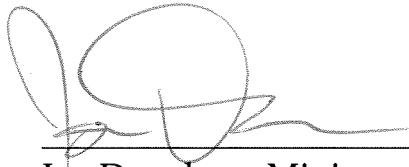
the time of its construction. See <https://youtu.be/deUBAutw8Co> and https://youtu.be/KM_SNaVWi1U Finally, Kenney Reed, the licensed master electrician whose company wired the building, has checked the property and verified there is no safety risk in turning the electricity back on.

See Attachment #1.

V. RELIEF

7. For the foregoing reasons, Movant respectfully prays for an emergency temporary restraining order requiring restoration of electrical service to the church property, and allowing continuation of the weekly religious services being held on the property.

Respectfully submitted,



Joe Donalson, Minister
New Beginnings Fellowship Church
P.O. Box 310841
Houston, TX 77231
(713) 928-0062
newbeginningshouston@live.com

CERTIFICATE OF CONFERENCE

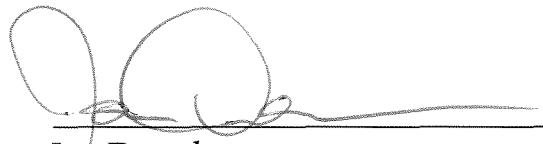
Opposing counsel E Voss has stated he opposes any type of injunctive relief in this case.



Joe Donalson

CERTIFICATE OF SERVICE

I certify that I have served a copy of this pleading in a manner consistent with the Federal Rules of Civil Procedure on this 26th day of September, 2019.



Joe Donalson